
John R. Commons's Industrial Relations: Its Development and Relevance to a Post-Industrial Society

J. Dennis Chasse



Electronic version

URL: <http://journals.openedition.org/ei/722>

DOI: 10.4000/ei.722

ISSN: 2553-1891

Publisher

Association Économie et Institutions

Printed version

Date of publication: 1 June 2003

Number of pages: 61-82

ISSN: 1775-2329

Electronic reference

J. Dennis Chasse, « John R. Commons's Industrial Relations: Its Development and Relevance to a Post-Industrial Society », *Économie et institutions* [Online], 2 | 2003, Online since 31 January 2013, connection on 20 April 2019. URL : <http://journals.openedition.org/ei/722> ; DOI : 10.4000/ei.722

John R. Commons's Industrial Relations: Its Development and Relevance to a Post-Industrial Society

J. Dennis Chasse, SUNY College at Brockport, Brockport, NY
14420

John R. Commons was born in 1862 into a violent industrializing world, and he struggled with the labor problems of that world. He died in 1945--five years before the United States officially became a post-industrial society-- with new labor problems needing new solutions¹. The industrial worksite with its lifetime employment and its Taylorist hierarchy broke down over the years-- and with it the New Deal industrial relations that had seemed permanent when Commons died (Kochan, McKersie and Katz 1986, Cobble 1994). In the post-industrial workplace distinctions between labor and management blur and external labor markets replace internal markets. Temporary help, contract workers, and simple downsizing replace lifetime employment. Global capital markets threaten national labor markets, and income gaps widen. Proponents of privatization question the value of any labor laws (Reynolds 1987). It seems natural to ask how ideas Commons developed many years ago can have any relevance to these new problems.

This paper argues that they can. Some have a timeless relevance, and others apply to certain "back to the future" aspects of the contemporary work environment. To make that argument, the paper detours through Commons's life because of the way his ideas developed. Commons created a synthesis working continually more complex variations into themes developed early in his life. The best way to appreciate his synthesis is to follow its development. The first part of the paper tries to do that. The Second part argues that his work remains relevant because his most general principles deal with rapid change which is a constant characteristic of capitalist society, and because his concrete proposals gain a new currency from some "back to the future" aspects of recent labor market changes.

¹A post-industrial society is defined as one in which more than fifty percent of the workers are in service industries. Daniel Bell (1976) seems to have invented the term. He describes the term this way: "The two large dimensions of a post-industrial society, as they are elaborated in this book, are the centrality of theoretical knowledge and the expansion of the service sector as against a manufacturing economy" (Bell 1976, p. xix). While manufacturing has remained a relatively constant fraction of GDP, the fraction of the labor force employed in service industries exceeded 50% in the United States in the 1950 census, and it has continued to grow. Consequently, according to the definition, the United States officially became a post-industrial country in 1950.

1. The Development of his ideas

Commons's professional life falls easily into three periods. An early period began with his graduate studies and ended in 1904 with his arrival at the University of Wisconsin; a second ended in 1916 with his minority report for the United States Commission on Industrial Relations. A final period of reflection and synthesis closed when he died.

The early period: 1888 to 1904

In graduate school, Commons studied the historical methodology of the German economists and the marginal methods of their Austrian opponents. His teacher, Richard T. Ely, social reformer and founder of the American Economic Association stressed the value for democratic reform of voluntary organizations outside the formal structure of the state. Ely defended unions because they counteracted the weakness of individual workers bargaining with large corporations (1890, p.14). One of Ely's colleagues, Henry Carter Adams, seeking a role for government in a market society, coined the term "competitive menace" (Adams 1954, p.89). When firms compete on price, Adams argued those employers least ethical in their labor practices become low cost producers, forcing others down to their level. The competitive menace, the weak bargaining position of the worker, and the role of voluntary organizations all became constant themes in the synthesis that Commons eventually worked out.

Commons left graduate school without a degree, lost three academic jobs in quick succession, and bounced around from one temporary position to another. During this early period, Commons worked out positions on the state and on collective bargaining. In *Proportional Representation*, Commons maintained that a system of regional representation would not respond well to working class concerns. Candidates seeking election in a geographic area succeed not so much by representing the pressing needs of a single group as by blandly avoiding controversy. But it is impossible to press the needs of the working class without controversy. Consequently, the government of the United States will not adequately respond to working class concerns. In *A Sociological View of Sovereignty* (1967) Commons, used British parliamentary history to explore the evolution of a state from monarchy to popular representative democracy². States emerge to control the incentive of violence. Over

² Between the years 1899-1900, Commons wrote a series of articles in the *American Sociological Review*. In 1967, Joseph Dorfman gathered these articles into a book entitled *A Sociological View of Sovereignty*. People familiar with Commons's work often refer to it as *The Sociology of Sovereignty*.

time, the state extracts that incentive from other organizations. It strips families of the right to abuse children, clergy of the right to torture and execute heretics, employers of the right to beat slaves, and so forth. These organizations must rely on persuasion to press their points of view. In its control of violence, the state operates according to the principles of justice held by the dominant groups that control it. Excluded groups struggle to enter the governing coalition, and as they battle their way in, notions of justice broaden and grow more adequate. Commons was to rework the theme of an evolving notion of justice many times in his professional life.

In his last job before going to the University of Wisconsin, Commons worked as a mediator for the National Civic Federation, an organization interested in solving problems through labor-management cooperation. While working for the Federation, Commons developed a belief in collective bargaining as a partial solution to the problems he had identified in *Proportional Representation*. Strong unions could force employers to follow on the industrial level the political process outlined in the *A Sociological View of Sovereignty*.

When Ely called him to Wisconsin therefore, Commons came with ideas about the competitive menace, the political weakness of labor in the United States, an evolving imperfect concept of justice, and the value of collective bargaining as a way to overcome the political weakness of labor.

Historical Vision and Policy Proposals 1904-1916

Commons arrived at the University of Wisconsin in 1904 to supervise a history of labor in the United States. He collaborated in reforms that made Wisconsin a leader in social legislation, and he summarized his view of industrial relations in a minority report to the United States Commission on Industrial Relations. His work on the history of labor produced a theory of economic evolution incorporating the competitive menace.

In an influential article, "The American Shoemakers," and in the first two volumes of the *History of Labour in the United States*, Commons and a group of exceptional students worked out a theory of capitalist evolution that emphasized "external conditions of marketing or production" as the major cause of the changing face of the competitive menace, and the growth of new organizations (Commons 1909, p. 40). Improvements in transportation and anticipated sales induce merchants to extend markets for different products. But the extension of markets increases the area within which the competitive menace can force working conditions to the level of the least ethical producer (Commons 1909, p. 68-69). Tasks, once performed in single firm, are parceled out to specialized

organizations-- financial tasks to bankers, supply functions to individual contractors, repetitive work to home producers or contractors. The increasing number of intervening concerns masks an underlying conflict between producer and consumer. Monopoly and monopsony power move back and forth in the chain separating producers and consumers. Those with monopoly or monopsony power force purchasers or suppliers into competition with each other. To escape the competitive menace, those forced into this position develop protective organizations. Those with monopoly or monopsony power then turn to the state to restrict freedom of association (Commons 1909, p. 61). Much of this happens, Commons noted, without the Marxist catalyst of technical change. While Henry Carter Adams had used the concept of the competitive menace to justify government regulation of the conditions of production, Commons used it to explain the rise of unions and other protective organizations. The concept of the competitive menace was a continuing underlying theme of "The American Shoemakers." In one section that begins with the title "*The Level of the Competitive Menace*," Commons wrote:

"Defining the "marginal producer" as the one with the lowest standards of living and cost and quality of work, he is the producer whose competition tends to drag down the level of the others toward his own. It is not necessary that he be able to actually supply the entire market or even the greater part of it. His effect on others depends on the extent to which he can be used as a club to intimidate others against standing out for their side of the bargain. He is a menace rather than an actual competitor" (Commons 1909, p. 68)

In the very next section entitled "Protective organizations," Commons chronicled the efforts of the American shoemakers to form organizations that would protect them from what Commons called "the competitive menace." The historical vision of almost unpredictable change implies the need for a policy apparatus that can recognize new problems and respond quickly.

The search for such an apparatus guided Commons's work in the Wisconsin State Government and later as a member of the United States Commission on Industrial Relations. The commission was established to investigate the age of industrial violence in the United States (Adams 1966). . Members of the ironworkers union were dynamiting bridges around the country. Their officers blew up the headquarters of the Los Angeles Times. Members of the National Guard fired on striking workers in Ludlow, Colorado, killing women and children, and as a result, violence erupted in the minefields of

Colorado. Violence accompanied strikes in the New York, Patterson, New Jersey, and Los Angeles.

Commons's membership on the commission is significant for two reasons. His minority report summarized a policy position that remained virtually unchanged for the rest of his life, and as the commission's tenure neared its end, Commons became embroiled in a dispute traumatic enough to almost completely destroy his physical and mental health.

The dispute at the end climaxed a long-standing difference between, the chairman, Frank Walsh, a crusading pro-labor attorney, and Charles McCarthy, the research director and a close friend of Commons³. Walsh wanted to stir up public indignation by exposing the corporate causes of the labor problem. McCarthy, who had recruited a staff of outstanding social scientists, wanted to craft policy prescriptions for solving the problem. As a football player at Brown University years earlier, McCarthy had become fast friends with the team's student manager, John D. Rockefeller, Jr. Rockefeller now owned the Colorado Fuel and Iron Company, the company responsible for the Ludlow massacre. Moreover, Rockefeller had put the resources of the Rockefeller Foundation behind an Industrial Relations initiative that would run counter to the committee's more radical proposals. Walsh asked McCarthy to investigate. McCarthy wrote a letter to Rockefeller telling him he had nothing to worry about. Walsh found the letter. From Walsh's legal viewpoint, this was unethical. When funds grew short, Walsh fired McCarthy, and with him, his outstanding staff. Commons was the only member of the commission to defend McCarthy. One staff member, the brilliant labor economist Robert Hoxie, committed suicide. This traumatic public policy experience may explain why Commons began trying to remain in academia and to work on a more theoretical level. Another reason may be that he had already reached most of his policy conclusions summarized in his minority report to the committee (Commons and Harriman 1916).

The heart of those proposals is a National Industrial Commission separate from the labor department. Career civil servants chosen on the basis of competitive examination should staff the commission. But the staff should respond to an advisory board whose members would be chosen as follows: ten representing employer organizations; ten unions; and ten non-governmental

³ Adams (1966, pp. 204-214) provides the most complete summary of the dispute. The account in Commons's autobiography is not accurate. It may be that at the age of seventy Commons had erased from his mind all the unpleasant aspects of this episode, particularly the questionable behavior of his friend, Charles McCarthy. Even reading between the lines of the autobiography, however, it is possible to discover the extent of the psychological trauma that his participation created for Commons.

organizations concerned about the welfare of unorganized workers. As examples of the latter, Commons cited the International Association for Labor Legislation, the Child Welfare League, and the Consumer League. Commons laid out specific procedures for involving the advisory board in initiation, review, and revision of staff investigations. He argued that public hearings are ineffective for controlling bureaucratic inertia.

Commons patterned this Commission after the Industrial Commission of Wisconsin, which was responsible for industrial health and workers' compensation. The insurance part of workers' compensation was the responsibility of a mutual insurance company created for that purpose. Commons hoped that heavily merit rated mutual insurance would reverse the competitive menace. The safest employers would have the lowest premiums; hence the lowest costs of production.

The main task of the National Commission would be investigation and legal revision, but the Commission would also be responsible for administration. Commons pointed out that the separation of functions among different agencies at the state level resulted in overlapping jurisdictions and inadequate enforcement. He proposed a broad sweep of legislation including occupational health regulations, a national employment system, compulsory health insurance, unemployment insurance, and other elements of a national welfare policy. He proposed a mediation service appointed by the Commission (Commons and Harriman 1916, p. 206). Once appointed, the chief mediator would be independent of the Commission. For Commons, it was vital that all sides view the Commission as strictly nonpartisan.

For this reason, he rejected government-imposed arbitration, specifically excluding the type prescribed by the Canadian Disputes Investigation Act of 1907 (Commons and Harriman 1916, p. 211). The mediator could appoint an arbitrator if the two sides asked for one. Commons made this concession grudgingly because once the arbitrator made a decision, the losing side was likely to view the arbitrator, and, by extension, the Commission as biased toward the winning side. Such a view on the part of the losers was bound to threaten the credibility of the Commission.

In assigning a role to government, Commons distinguished union from non-union workplaces. In the case of individual contracts, where workers are at a disadvantage, Commons proposed that government should intervene with child labor laws, worker compensation laws, mechanics' liens, occupational health laws and other laws designed to protect the workers' weak bargaining position.

But where unions were organized, Commons held that the government should level the playing field and step back. He criticized laws of his day for giving employers an unfair advantage. He seemed

to believe, though, that the path to correction was not to constrain employers, but to remove constraints from unions. He advocated legalization of every possible union tactic short of violence. He advocated changing the anti-trust laws to permit centralized bargaining between organized employers and organized unions. This implied revising laws against conspiracies in restraint of trade in the case of the wage bargain (Commons and Harriman 1916, p. 214-215). That is, Commons advocated centralized industry wide bargaining with economic power equal on both sides, and with the government strictly neutral. This reflected his belief that unions would lose in the political arena unless they first cultivated public opinion.

. . . . if the State recognizes any particular union by compelling the employer to recognize it, the State must necessarily guarantee the union to the extent that it must strip it of any abuses that it may practice. The State might be compelled to regulate its initiation fees and dues, its apprenticeship ratio, its violation of agreements, and all the other abuses on account of which the employer refuses to deal with it. This is exactly what is done through compulsory arbitration, and there is no place where the State can stop if it brings compulsion to bear on employers without regulating the compulsion of unions. If so, the whole question is transferred to politics, and the unions, which attempt to use a friendly party to regulate the employer, may find a hostile party regulating them (Commons and Harriman 1916, p. 212).

Consistent with his view that external circumstances aggravate conflicts within firms, Commons took his proposals beyond the labor market (Commons and Harriman 1916, p. 225-8). He advocated integrated rural development and limits on immigration to reduce the flow of workers into the cities. He called for a series of laws to "take control of politics out of the hands of the corporations and place it in the hands of the people." He advocated corrupt practices acts, campaign finance reform, and proportional representation, which would permit the formation of a labor party and a women's rights party.

It may have been the trauma of the disagreement that marred the committee's proceedings. It may have been the complete mental and physical breakdown that he suffered as a result. It may simply have been a desire to work out more theoretical ideas. In any case, Commons seemed more willing after the commission was disbanded, to leave activism to his students and to concentrate on academic pursuits.

1916-1945 Synthesis and Generalization

After 1916, though still involved in the progressive turmoil of his time, Commons focused on synthesizing his life of research and experience in an institutional economics. He argued that transactions, not individuals should be the smallest unit of analysis because individual decisions always reflect a social history and an organizational role. For industrial relations, the relevant transactions surround the wage bargain. The evolution of social norms first described in *A Sociological View of Sovereignty* appeared again in his development of two normative concepts: public purpose and reasonable values. In the *Legal Foundations of Capitalism*, he placed the wage bargain in the context of public purpose. In *Institutional Economics*, he applied his notion of reasonable value to the problem of finding policies in labor markets threatened by new forms of the competitive menace.

The most quoted sentence in *The Legal Foundations of Capitalism* appears in the chapter on the wage bargain.

Apparently a "new equity" is needed--an equity that will protect the job as the older equity protected the business."(Commons 1924, p. 307)

Commons never clearly defined this "new equity." Rather, he described a process by which a society could work toward it. He started with a history of legal decisions guided by a notion of a public purpose; then he argued that the right to collective bargaining should be part of that public purpose. He followed the evolution of laws governing the wage transaction; from acceptance of indentured servitude and slavery to the employment at will principle. Then he moved to the history of property rights. In tracing the history of property rights, Commons reviewed a number of cases in which the U.S. Supreme Court invalidated state court decisions because they deprived the complainants of property without due process of law. The Court insisted that due process implied not just formal procedures, but fidelity to the purpose of the law --the public purpose. When the personal rights of workers were at stake, however, the Supreme Court did not require attention to the public purpose. Commons drew the following conclusion.

"Thus property rights are deemed so important for national purposes that the Fourteenth Amendment authorizes the federal court to protect them against the states. But personal rights, including as they do, the rights of workingmen and others when property rights are negligible, are deemed to be less important for national purposes and may be left to the states" (Commons 1924, p. 341).

Before he developed his argument for including rights of workers in the public purpose, Commons tried to nail down an operational meaning for the term public purpose itself. Organizations

exist for goals that can be formulated in a general way with words such as “social welfare, public good, commonweal, and commonwealth.” These terms, though, are “vague and indefinite” providing “no certain guidance in particular cases” (Commons 1924, p. 381)

In seeking “guidance for particular cases,” Commons denied the existence of any public purpose or general will apart from the wills of individual people. The welfare of a person or a group becomes a public purpose simply by being so classified (Commons 1924, p. 372-3). Originally the public purpose meant only the welfare of the king (1924, p. 324). Over time, courts included private rights of merchants and manufacturers within the public purpose. The courts did not make those decisions by deduction from some general idea. Rather, they focused on undesirable aspects of their current environment. These were factors limiting attainment of a goal only dimly anticipated. Historically, rulers and courts assumed that the limiting factor was the scarcity of capital or business ability.

Commons then set out to show that workers’ rights to collective bargaining should be classified within the public purpose. He pointed out that Adam Smith defined the wealth of nations as the *annual* labor of the nation. Moreover, Smith declared that per capita wealth depends on the “skill, dexterity, and judgment with which labor is generally applied,” and on the ratio of unproductive to productive labor (Commons 1924, p. 362; Smith, p. 395). Smith wanted to free workers from the restrictions of guilds, landlords, and corporations. He did not foresee the emergence of huge corporations protected by limited liability. Limited liability laws permitting the growth of corporations weakened the bargaining position of individual workers, and now collective bargaining was closer to Smith’s ideal than unequal wage bargains between single workers and large corporations (Commons 1924, p. 363).

In *Institutional Economics*, Commons added to the concept of public purpose an intensive analysis of reasonableness as a guide to public policy. He rejected John Locke’s reasonableness based on natural rights or on what a reasonable person would conclude. If that were true, Commons objected, there would be as many reasonable values as there are people. In addition, people are not reasonable all the time, but operate from habit and custom. People can be “stupid, passionate and ignorant” (Commons 1934, p. 680-682). By mentioning John Locke, Commons recalled how he had begun *Institutional Economics* – with John Locke’s reaction to the wars of religion and his search for a way to replace dogmatic intolerance with “reasonableness in all things”(Commons 1934, p. 14). But Locke’s theory of knowledge hindered his search for reasonableness because it ended in David Hume’s skepticism and relativism. Commons solved the problem of skepticism and relativism

by adopting Charles Sanders Peirce's definitions of meaning and truth. Peirce's definition of meaning is famous. "Consider what effects, which might conceivably have practical bearings, we conceive the object of our conception to have. Then our conception of these effects is the whole of our conception of the object." (Commons 1934, p. 151, Peirce 1992, p. 132). Peirce's "practical bearings" were scientific, not utilitarian. For Peirce, the Michaelson-Morley results would be practical bearings from the theory of relativity. Peirce defined truth as "The opinion which is fated to be ultimately agreed to by all who investigate" (Commons 1934, p. 153, Peirce 1992, p. 139). To adapt Peirce's philosophy to Locke's search for reasonableness, Commons, following John Dewey, changed Peirce's "practical bearings" to "desirable social consequences," or a public purpose (Commons 1934, pp. 150, 655). Since unborn generations have not weighed in, truth about public purpose and reasonable value is always provisional. Its improvement depends on processes designed to encourage open intellectual inquiry into all the evidence from all points of view at each historical moment.

As an example of processes so designed, Commons pointed to legal procedures. Courts make "new law by taking over the changing customs of the dominant portion of the people at the time and formulating them by a rationalizing process of justification into working rules for collective action in control of individual action" (Commons 1934, p. 682). For anyone familiar with the *A Sociological View of Sovereignty*, the term "dominant portion of the people" implies that reasonable value must be provisional--changing when new groups muscle their way into the "dominant portion of the people." Commons had a philosophical basis for the democratic principles he had outlined forty years earlier, and he had a philosophy of policy analysis, which he summarized after 200 pages of further elaboration.

"The theory of reasonable value may be summarized, in its pragmatic application, as a theory of social progress by means of personality controlled, liberated and expanded by collective action...."

"Unregulated profit-seeking drags the conscientious down towards the level of the least conscientious; yet a considerable minority is always above that level, no matter how high it may have been raised by collective action. These indicate the possibility of progress."

"The problem, then, is the limited one of investigating the working rules of collective action which bring reluctant individuals up to, not an impracticable ideal, but a reasonable idealism, because it is already demonstrated to be practicable by a progressive minority under existing conditions" (Commons 1934, p. 874).

Trade unions, farm cooperatives, and other such organizations, Commons added, though they cover only a small

percentage of the working population "elevate their members to a higher sense of responsibility for each other" (Commons 1934, p. 874). Commons later argued that unions are among the strongest forces protecting democratic processes and opposing totalitarian tendencies in government (Commons 1950, p. 262).

Thus, the final variation on the themes developed early in his career, took the form of a historical vision resulting in a policy prescription. When Commons wrote that "Unregulated profit-seeking drags the conscientious down towards the level of the least conscientious," he was returning to the competitive menace—and the possibility of a downward social spiral to inequality and violence (Commons 1909, p. 68). He also returned to the possibility of progress first outlined in *A Sociological View of Sovereignty*. New groups struggle to bring their conceptions of justice into the dialogue that defines the evolving but always-flawed public purpose. In his final synthesis, public purpose and reasonable value are integrated into a pragmatic philosophy of policy formation supported by Peirce's concept of truth as the objective of social inquiry.

In *The Legal Foundations of Capitalism* Commons defined the task of policy analysis in general terms to be one of finding and removing the factor limiting progress toward the public purpose. In this way societies evolve by what Commons called artificial selection. Authorities encourage desirable customs and discourage undesirable customs in the light of what they believe at the time to be factors limiting the attainment of dimly understood public purposes (1924, p. 377). Removal of the correct limiting factor ushers in a condition generally accepted as better than the previous condition. A new limiting factor, perhaps a new public purpose, emerges. In *Institutional Economics*, he brought policy analysis down to a concrete research agenda of finding "the progressive minority," and reversing the competitive menace so that the "progressive minority," leads. These leaders emerge from organizations such as unions and farm organizations as well as from business elites. Consequently freedom of association must always be part of the public purpose. Case studies must seek out the solutions developed by the "progressive minority" so they can be adapted to other situations—always accounting for similarities and differences.

2. Contemporary Relevance

Jerald Hage and Charles Powers reasoned that sociologists still find relevance in the writings of Max Weber, Emile Durkheim, Ferdinand Tönnies, and Vilfredo Pareto because they lived and wrote during the "golden age of sociology," the years of great discontinuity from 1890 to 1930, and as a result, their concepts and frameworks--anomie, bureaucracy, ideal types, *gemeinschaft* and *gesellschaft*--

contain insights into discontinuity itself, and so retain validity in the current era of discontinuity (Hage and Powers 1992, p. 1). The same reasoning might apply to John R. Commons who worked out his concepts and frameworks between 1890 and 1930. The labor market pathologies that bothered him--low wages, unemployment, underemployment, internal contracting, and massive turnover--afflict the labor markets of today. Ulrich Beck points out that the unemployment and underemployment experienced by developed economies since 1980 were "the normal case" in the 19th century (Beck 2000, p. 12). Scott Lash and John Urry mention the predominance of internal contracting in the early 20th century United States (Lash and Urry 1987, p. 164-165). Commons and his student William Leiserson described massive turnover in Pittsburgh industries (Commons and Leiserson 1914, p. 116-117). The reasoning of Hage and Powers could thus justify the claim of relevance for some of Commons's concepts—"transactions," "competitive menace," "representation of interests," "limiting factor," "public purpose," and "reasonable value." The contention of relevance can be strengthened by pointing out how these concepts could cast fresh light on current problems, and how, in the United States, reformers, unaware of his suggestions for labor law reform, are rediscovering them.

Oliver Williamson found Commons's concept of transactions relevant for industrial organization (Williamson 1975, pp. 3, 254)⁴. But Williamson, concerned with efficiency, paid little attention to way Commons explained how an unpredictably changing complex of transactions can generate an arbitrarily shifting competitive menace.

Commons focused on simple economic processes like making and selling shoes. People rarely buy shoes from a shoemaker. Rather consumers stand at one end of a complex set of transactions, and workers at the other. Between workers and consumers are managers, wholesalers, transportation companies, retailers, management consultants, stockbrokers, investment bankers, commercial bankers, individual stockholders, and pension fund managers. Individual firms merge and split unpredictably. In addition, sovereign power enforces rights and duties, and monetary authorities control aggregate activity through the money supply (Commons 1950, p. 43-57). The competitive menace appears when those with economic

⁴ Williamson read *Institutional Economics*. But he did not read Commons's earlier works without which some aspects of *Institutional Economics* cannot make sense. Williamson accepted Commons's statement that the transaction should be the smallest unit of analysis, but he did not consider relevant Commons's other terminology that Commons used, particularly Commons's statement that the transaction should be analyzed from an economic, a legal, an ethical, and a psychological perspective. Consequently, he missed Commons's rationale for arguing that the wage transaction is not free but coercive.

power in this complex set of transactions force those without economic power to compete, increasing the returns of the powerful at the expense of the powerless. For Commons, expanding markets shifted power around in this complex of transactions, and with it the arbitrarily shifting menace of competition.

The menace of competition may conveniently be described as external and internal. The former arises within the area of the existing market, the latter proceeds from cheap producers abroad. With the ever-widening area of political control these external menaces become internal, and it is this moving frontier that determines the scope and character of protective organizations and protective legislation (Commons 1909, p.78)

Some current research supports the relevance of the transaction as Commons used it to explain “the menace of competition.” James Galbraith, disputing attributions of wage disparity to educational disparity or to global competition, showed that capital equipment and software companies paid higher wages than service companies or goods producing companies—at all skill levels (Galbraith 1998). Then he showed that capital equipment and software companies have the most monopoly power and that service companies have the least. Companies with monopoly power can share some of their gains with their workers. Those with none, face the competitive menace, ---though Galbraith did not use that term. Joel Nelson (1995) argued that the post-industrial growth of managerial knowledge endowed corporations with power because that knowledge is expensive. Large corporations can afford to buy knowledge and management expertise which they use to invade national markets, driving down prices and consequently wages. Of particular interest are “hollow corporations,” such as Nike, Pierre Cardin, or Polo. They consist only of managers who develop and market products produced by subcontractors who must compete for contracts. Large retailers such as Wal-Mart are able, not only to destroy small retail establishments with which they compete, but also to force their suppliers to compete for contracts (Nelson 1995, p. 67-68). Wal-Mart is not the only firm that forces its suppliers to compete on price. William Finnegan writes that between 1980 and 1995, the total assets of the world’s 100 largest corporations increased by 697 percent, while their direct labor force fell by 8%. Production was shifted to contractors and subcontractors who must compete on price. Expensive knowledge is also essential for politicians, and since corporate contributions supply the finances to buy that knowledge, corporate control over political decisions has expanded (Nelson 1995, p. 105-131). As companies expand to become what Scott Lash and John Urry called polycentric multinationals, the competitive menace can reach sovereign states

forced to compete through “ ‘free production zones’ offering all sorts of exemptions, reliefs, preferential rates, tax holidays and the like” (Lash and Urry 1987, p. 90).

Commons’s attention to power imbalances in transactions and to the resulting competitive menace could improve current explanations for labor market pathologies. Ulrich Beck seems to attribute rising unemployment and underemployment to technological unemployment in which “smart technology” replaces workers (Beck 2000, p. 2). The problem with this explanation is that for many years, technology replaced workers in manufacturing industries, but economies maintained full employment because employment in service industries rose. Beck also writes that “Capital is global,” and “labor is local” and that, as a result “working people are losers in the battle to distribute risks of globalization” (Beck 2000, p. 47). This supports Commons’s emphasis on market expansion and the changing power relationships in the set of transactions that separate the price bargain from the wage bargain. On the other hand, Beck’s statement appears to depend on mobility of capital argument, but that argument does not explain falling wages of construction workers or low wages for home health care workers, child care workers, and restaurant and hotel employees. None of these people face global competition. Interestingly, Commons and Leiserson, in their Pittsburgh study found mobile labor and immobile capital when immigrants flood into a country for unskilled labor jobs (Commons and Leiserson 1914, p. 116). There are other explanations for unemployment and underemployment. The most common is the deficiency in aggregate demand. Commons mentioned such policies in the context of sovereignty and the money supply (Commons 1950, pp. 43-48, 239-260).

Beck and Anthony Giddens, dismiss any potential for full employment demand management because of increasing international economic interdependence (Beck 2000, p. 70; Giddens 1990, p. 76). Neither Beck nor Giddens seems to have paid much attention to post-Keynesian literature that attributes stagnation, unemployment and underemployment to contractionary policies by central banks and governments---leading to international liquidity shortages (Block 1990, Eisner 1996, Wray 1998)⁵.

From Commons’s analytical framework it is possible to propose three related explanations for public policies that lead to

⁵ Giddens (2000, p. 37) seems to have changed his mind about the usefulness of aggregate demand management—though he still does not seem to understand the implications of a liquidity shortage (2000, p. 73). Giddens also calls for an international central bank, but, again, he does not deal with the problem that all the central banks can cause if they focus on preventing inflation to the exclusion of other goals (Giddens 2000, p. 127).

liquidity shortages. The first explanation, the thesis of *Proportional Representation*, states that a system of spatial representation cannot respond to the views of all who are affected by government decisions. The quasi-governments of the global economy are the World Trade Organization (WTO) and the two Bretton Woods organizations—the World Bank and the International Monetary Fund (IMF). In all these organizations, decisions depend on representatives of nation states, with decision making power tilted toward the richer states. Even less developed countries, however, are represented by westernized elites who would not be inclined to represent their own subsistence farmers or labor unions. The second explanation stems from Commons's position that limited liability creates permanent imbalances of political or economic power (1924, p. 363). Their political power automatically places corporate decision-makers in the dominant class able to impose their notions of justice on public entities. The third and related explanation for policies creating international liquidity shortages stems from Commons's position that an imperfect public purpose reflects the vague objectives of the dominant class. Based on experience in the seventies dominant classes concluded that inflation was the limiting factor preventing attainment of their vaguely defined public purpose. The WTO, the IMF, the World Bank, and national central banks operate on principles of justice held by the dominant class. Those principles were summarized until recently in the Washington consensus.

The shortcomings of this consensus and of its implied public purpose are gradually becoming apparent as intellectual critiques buttress street demonstrations (Stiglitz 2002, Finnegan 2003). Within Commons's framework, one would say that it is time to find another limiting factor, one that would permit conception of a more adequate public purpose for the global community, and for Commons the path toward finding a more adequate concept of that public purpose lies along the direction pointed out by C.S. Peirce, the direction that allows consideration of the evidence and views of all who inquire, in Commons's terminology, the search for reasonable value, or reasonableness

“reasonableness is best ascertained in practice when representatives of conflicting organized economic interests, instead of politicians or lawyers, agree voluntarily on the working rules of their collective action in control of individual action” (Commons 1950, p. 25).

The structure Commons suggested for his Industrial Commission should not be blindly applied to the international agencies, but it embodied two principles-- representation of interests and technical investigation by a competent staff protected by civil service status from political influence. The World Bank and the International Monetary Fund have technical staffs, but their basic

direction is set in a way that falls woefully short of the principle of representation of interests. The World Trade Organization, almost mysterious in its secrecy, and the strange in its structure, violates both principles. Repeated violent protests attest to a widely held belief that these international organizations act unjustly because they represent the interests of large corporations. And, as if the ghost of Commons whispered in their ears, some suggest representation of other interests in the decision making circles of these organizations (Finnegan 2003, p. 54). Anthony Giddens criticizes the power of the large governments in international organizations, and he also criticizes the authoritarian nature of some governments in the less developed world (Giddens 2000, pp. 128-9). But he does not proceed to the need for representation of affected interests such as workers and farmers in these countries.

Of course, representation assumes freedom of association, and the gist of Commons's proposals for the National Industrial Relations Commission was that in many ways the laws of property inhibit freedom of association. One might argue for a revival of the International Association for Labor Legislation in which Commons's student, John B. Andrews played such an important role (Chasse 1991).

Anthony Giddens assumes this freedom of association, but does not explicitly set it as a condition for his "utopian idealism," and he considers the role of social movements under the rubric of what he calls the four poles of modernity (Giddens 1990, p. 158-163). To counter the negative effects of information control in the modern state, he posits free speech and democratic movements. To counter the negative effects of capitalism, he posits labor movements. To counter the negative effects of industrialism, he posits ecological movements, and to counter the effects of military power, he posits peace movements. To counter the effects of capitalism, he posits labor movements. Full freedom of association is the necessary condition for any of these movements to become effective. Giddens's utopia, therefore, depends on Commons's insistence that freedom of association, particularly for workers, should not be curtailed, but Giddens never attends to the legal roadblocks hindering the effectiveness of organizations that challenge the dominant class⁶.

Commons's argument for including the right to collective bargaining within the public purpose gains relevance in light of current arguments for removing it (Reynolds 1987). Opponents of collective bargaining rest their case on the counterexample of the free wage bargain. They ignore the privilege of limited liability and the implication, drawn out by Commons that one worker does not have

⁶ As I write this, troops are firing on workers and farmers in Peru because they oppose the policies of their president, a former World Bank economist.

the bargaining power of one corporation, and the corporation exists, not because of free market forces, but because of the privilege of limited liability.

Evidence both for the relevance of Commons's methods exists in proposals of people who today propose policies to correct the anti-labor bias of American laws, unaware that Commons proposed the same policies a hundred years ago.

In addition to suggesting a tripartite structure for the National Labor Relations Board, Richard Block argues that the United States needs a separate tripartite national commission to investigate labor practices and to suggest changes that keep labor laws abreast of a changing work environment. This normal maintenance, Block claims, would fill the role played by parliamentary debate in systems such as Canada's (1994, p. 158-9). Commons made precisely the same argument when he proposed his National Industrial Commission (Commons and Harriman 1916, p. 187). Dorothy Sue Cobble suggests removal of restrictions on union tactics, and a removal of the need for union certification as a pre-requisite to bargaining (1994, p. 296-297). Commons had suggested removal of all restrictions on union tactics.

Cobble also suggests centralized collective bargaining. Together with the National Industrial Council, centralized bargaining was the centerpiece of the system Commons proposed in his minority report for the National Industrial Relations Commission. Recently, arguments in favor of such a system have been strengthened by comparisons between the United States and the European Union. Over the past 20 years, the lowest ten-percent of the work force fared better in Europe than in the United States. Lawrence Katz and Richard Freeman attribute part of the difference to centralized union contracts in Europe (Freeman and Katz 1993). And, investigators for the European Community found that centralized bargaining removes and in some cases reverses any negative effects of unionization on employment (European Commission 1999, p. 137). It is disconcerting, therefore, to find that centralized bargaining is breaking down in Europe (Lash and Urry 1987, pp. 237-262).

In addition, some crucial events have borne out his specific predictions. Contrary to conventional wisdom, the National Labor Relations Act (NLRA) does not embody Commons's philosophy. In *The Economics of Collective Action* He changed his opposition to any government role in collective bargaining enough to admit the need for some sort of "labor court" (Commons 1950, pp. 266, 276). But he advocated tripartite control of the National Labor Relations Board (NLRB) (Commons 1950, p. 275). The business community, in the Taft-Hartley amendments secured restrictions on union tactics, and a passage guaranteeing individual rights that contradicted the right of collective bargaining. The result politicized the National Labor

Relations Board. By 1986, the fiftieth anniversary of the NLRA, the president of the AFL-CIO complained that labor would rather see NLRB disbanded so all could "return to the law of the jungle" (Cited in Holley and Jennings 1994:

... The unions which attempt to use a friendly party to regulate the employer may find a hostile party regulating them (Commons and Harriman 1916, p. 212).

Of course the similarity between many current policy proposals and those of Commons does not mean that his policy proposals could be woodenly applied today. In fact, reflecting on the history of unions up to the 1960s, one of Commons's best students eventually disagreed with Commons's insistence that unions stay out of politics. David Saposs argued that unions need state protection and that they must engage in political activity to prevent anti-union legislation (Saposs 1966). Rather, the rediscovery of his conclusions tends to validate the principles by which he reached them. Indeed, those principles stressed processes of inquiry rather than concrete conclusions. They were, in fact, principles for dealing with the restlessly evolving challenges of a capitalist economy.

And those principles still seem to apply. James Galbraith's demonstration that monopoly power explains wage disparities better than education or skill backs up Commons's picture of an unpredictably changing complex of transactions generating an arbitrarily shifting competitive menace driving down working conditions in individual labor markets. Joel Nelson's thesis on the competitive effect of managerial knowledge strengthens the pertinence of that picture as does the "disorganized capitalism" of Scott Lash and John Urry. Unemployment, underemployment, and restrictive monetary and fiscal policies can be explained by Commons's concepts of public purpose and limiting factor together with his position that limited liability creates an economic imbalance of power. And his solution embodied in the principles of reasonable value and representation of interests finds echoes in proposals for reform of the major international financial institutions.

Conclusion

The major themes that Commons developed over a lifetime, therefore, retain their ability to enlighten inquiries into the nature of current issues. Perhaps the greatest argument for this position lies in careful consideration of his life and its circumstances. He sought, not a criterion of justice but a process by which society could, over time, come to see injustices to which it had been blind. He conceived of the just society, in the fallibilist tradition of C.S. Peirce, as an unreachable limit toward which inquiry might tend, and that inquiry had to include representatives of all interested parties. It was a

radical view of democracy in the pragmatic tradition, and it implied industrial democracy. The relevance of his work can be further illustrated by showing how his key concepts—transaction, competitive menace, limiting value, public purpose, and reasonable value—provide enlightening perspectives on contemporary issues. The rediscovery of his solutions for current problems further strengthens the impression that his concepts and methods retain a contemporary pertinence.

References

Adams, Graham. 1966. *The Age of Industrial Violence 1910-1915. The Activities and Findings of the U.S. Commission on Industrial Relations*. New York: Columbia University Press

Adams, Henry Carter. 1954. *Relation of the State to Industrial Action and Economics of Jurisprudence* Joseph Dorfman, ed. New York: Columbia University Press.

Bell, Daniel. 1976. *The Coming of Post-Industrial Society: A Venture in Social Forecasting*. New York: Basic Books.

Block, Fred. 1990. *Postindustrial Possibilities: A Critique of Economic Discourse*. Berkeley, CA.: University of California Press.

Block, Richard, N. 1994. "Reforming U.S. Labor Law and Collective Bargaining: Some Proposals Based on the Canadian System." *Restoring the Promise of American Labor Law*. S. Friedman, R. W. Hurd, R.A. Oswald, and R.L. Seeber ,eds.. Ithaca, New York: ILR Press, 250-59

Bruce, Peter, G. 1994. "On the Status of Workers' Rights to Organize in the United States and Canada." *Restoring the Promise of American Labor Law*. S. Friedman, R. W. Hurd, R. A. Oswald, and R. L. Seeber, eds. . Ithaca, New York: ILR Press, 273-82.

Capelli, Peter. 2000. "Market-Mediated Employment: The Historical Context." *The New Relationship: Human Capital in the American Corporation*. M. M. Blair and T. A. Kochan, eds. pp.66-101. Washington, D.C: Brookings.

Chaison, Gary, N. and Joseph B. Rose. 1994. "The Canadian Perspective on Workers' Rights." *Restoring the Promise of American Labor Law*. Sheldon Friedman, Richard W. Hurd, Rudolph A. Oswald, and Ronald L. Seeber eds. pp. 241-9. Ithaca, NY: ILR Press

Chasse, John, D. 1991. "The American Association for Labor Legislation: An Episode in Institutionalist Policy Analysis." *Journal of Economic Issues* Vol.25, no.3 (September): 799-828.

Cobble, Dorothy Sue.1994."Making Postindustrial Unionism Possible." *Restoring the Promise of American Labor Law*. S. Friedman, R.W. Hurd, R. A. Oswald, and R. L. Seeber, eds.pp. 285-302 Ithaca, NY: ILR Press.

Commons, John, R 1895. *Proportional Representation*. Boston and New York: T.Y. Crowell and Company

_____. 1899-1900 [1967 reprint]. *A Sociological View of Sovereignty*. Joseph Dorfman, ed. New York: Augustus M. Kelley.

_____. 1909"American Shoemakers, 1648-1895: A Sketch of Industrial Evolution." *Quarterly Journal of Economics*. Volume 24: 39-83.

_____.1924 [1974 reprint]. *Legal Foundations of Capitalism*. Clifton, NJ: Augustus M. Kelley

_____. 1934 [1961 reprint] *Institutional Economics*. Madison WI: University of Wisconsin Press.

_____.1950.*The Economics of Collective Action*. New York: Macmillan, 1950.

Commons, John R. and Florence J. Harriman 1916. "Report of Commissioners John R. Commons and Florence J. Harriman. " United States Commission on Industrial Relations. *Final Report of the Commission on Industrial Relations*. Senate Document No.415. 64th Congress. 1st Session. 169-230. Washington, D.C.: Government Printing Office.

Commons, John, R., Saposs, D.J., Sumner, H.L., Mittleman, E.B., Hoagland, H.E., and J.B. Andrews. 1918-1935 *History of Labour in the United States*. New York: Macmillan.

Commons, John,R. and John B. Andrews. 1936 [1967 reprint] *Principles of Labor Legislation*. 4th edition. New York: Augustus M. Kelley.

Commons, John R. and William Leiserson. (1914 [1974 reprint] "Wage-Earners of Pittsburgh" in *Wage-Earning Pittsburgh*. Edited by Paul U. Kellog. pp. 113-189. New York: Arno Press.

Dawson, R. MacGregor.1958. *William Lyon Mackenzie King: A Political Biography*. Toronto: University of Toronto Press.

Eisner, Robert.1996. "The Retreat from Full Employment." in *Employment, Economic Growth, and the Tyranny of the Market: essays in Honour of Paul Davidson*. Edited by Philip Arestis. pp. 106-130. Brookfield, VT: Edward Elgar.

Ely, Richard, T. 1890. *The Labor Movement*. 3d edition. New York: Thomas Y. Crowell.

European Commission: Directorate for Economic and Financial Affairs. *European Economy: The EU Economy 1999 Review*. No.69. Luxembourg: Office for the Official Publications of the European Community 1999.

Finnegan, William. 2003. "The Economics of Empire: Notes on the Washington Consensus." *Harper's*. v.306, no.1836: 41-54.

Freeman, Richard, B. and Lawrence F. Katz, 1993, "Rising Inequality," in *Working under Different Rules*. R.B. Freeman, ed. New York: Russell Sage Foundation, 29-62.

Galbraith, James. 1998. *Created Unequal: The Crisis in American Pay*. New York: Twentieth Century Fund.

Giddens, Anthony. 2000. *The Third Way and its Critics*. Malden, MA: Polity Press.

Gitelman, H.M. 1988. *Legacy of the Ludlow Massacre: A Chapter in American Industrial Relations*. Philadelphia: University of Pennsylvania Press.

Hage, Jerald and Charles F. Powers. 1992. *Post-Industrial Lives: Roles and Relationships in the 21st Century*. Newbury Park, CA: Sage Publications.

Holley, William, M. and Kenneth M. Jennings. 1994. *The Labor Relations Process*. 5th edition. Fort Worth, TX: Dryden Press.

Kochan, Thomas, Katz, Harry, and Richard McKersie. 1986. *The Transformation of American Industrial Relations*. New York: Basic Books.

Lash, Scott and John Urry. 1987. *The End of Organized Capitalism*. Madison, WI: University of Wisconsin Press.

Lonergan, Bernard, J.F. 1978. *Insight: A Study of Human Understanding*. New York: Harper and Row Paperback Edition.

McBride, Stephen, 1992. *Not Working: State, Unemployment, and Neo-Conservatism in Canada*. Toronto: University of Toronto press.

Mehmet, Ozay, Errol Mendes, and Robert Sinding. 1999. *Towards a Fair Global Labour Market: Avoiding a New Slave Trade*. New York and London: Routledge.

Nelson, Joel, I. 1995. *Post-Industrial Capitalism: Exploring Inequality in America*. Thousand Oaks, CA: Sage Publications.

- Peirce, Charles, S. 1993."How to Make our Ideas Clear." In *The Essential Peirce: Selected Philosophical Writings*. Volume I (1867-1893). N. Houser and C. Kloesel, eds. pp. 124-41. Bloomington and Indianapolis: University of Indiana Press.
- Reynolds, Morgan.1987 *Making America Poorer: The Cost of Labor Law*. Washington, D.C. The Cato Institute.
- Ray, Douglas E. Calvin W Sharpe, and Robert N. Strassfield. 1999. *Understanding Labor Law*. New York: Matthew Bender.
- Riddell, W. Craig. 1986. *Labour-Management Cooperation in Canada*. Toronto: University of Toronto Press.
- Rogers, Joel and Wolfgang Streeck.1993."Workplace Representation Overseas: The Works Councils Story. *Working under Different Rules*. pp. 97-156. R. B. Freeman, ed. pp.97-156. New York: Russell Sage.
- Saposs, David.1966. "The Labor Movement: A Look Forward and Backward.." in *The Labor Movement: A Re-examination: A Conference in Honor of David Saposs*. ed. Jack Barbash, 73-97.Madison, WI: University of Wisconsin Press.
- Smith, Adam.1776 [1922 reprint]. *An Inquiry into the Nature and Causes of the Wealth of Nations* 3d edition. E. Canaan ed. London: Methuen. Vol.1.
- Stiglitz, Joseph, E.2002. *Globalization and Its Discontents*. New York: W.W. Norton.
- Urry, John.1999. "Globalization and Citizenship." *Journal of World Systems Research*. V.5, no.2: 311-324.
- Useem, Michael. 1996. *Investor Capitalism: How Money Managers Are Changing the Face of Corporate America*. New York: Basic Books.
- Williamson, Oliver.1975. *Markets and Hierarchies, Analysis and Anti-trust Implications*. New York: Free press.
- Wray, L. Randall. 1998. *Understanding Modern Money*. Brookfield, VT: Edward Elgar